

Railroad Retirement Board

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the debt is not past due or legally enforceable, has considered evidence, if any, presented by such debtor, and has determined that an amount of such debt is past due and legally enforceable.

[54 FR 397, Jan. 6, 1989, as amended at 60 FR 66073, Dec. 21, 1995]

§ 366.3 Reasonable attempt to notify.

In order to constitute a reasonable attempt to notify the debtor the Board must have used a mailing address for the debtor obtained from the Internal Revenue Service pursuant to section 6103 (m)(2) or (m)(4) of the Internal Revenue Code within a period of one year preceding the attempt to notify the debtor, whether or not the Board has used any other address maintained by the Board for the debtor.

§ 366.4 Notification to debtor.

The notification provided by the Board to the debtor will inform the debtor how he or she may present evidence to the Board that all or part of the debt is not past due or legally enforceable.

§ 366.5 Consideration of evidence.

Evidence submitted by the debtor will be considered only by officials or employees of the Board and a determination that an amount of such debt is past-due and legally enforceable will be made only by such officials or employees.

§ 366.6 Change in notification to Internal Revenue Service.

If, after submitting to the Internal Revenue Service notification of liability for a debt, the Board:

(a) Determines that an error has been made with respect to the information contained in the notification,

(b) Receives a payment or credits a payment to the account of the debtor named in the notification that reduces the amount of the debt referred to the Internal Revenue Service for offset, or

(c) Receives notification that the debtor has filed for bankruptcy under title 11 of the United States Code or has been adjudicated bankrupt and the debt has been discharged, the Board will promptly notify the Internal Revenue Service. However, the Board will

make no notification to the Internal Revenue Service to increase the amount of a debt owed by a debtor named in the Board's original notification to the Internal Revenue Service. If the amount of a debt is reduced after referral by the Board and offset by the Internal Revenue Service, the Board will refund to the debtor any excess amount and will promptly notify the Internal Revenue Service of any refund made by the Board.

[54 FR 397, Jan. 6, 1989, as amended at 60 FR 66073, Dec. 21, 1995]

PART 367—RECOVERY OF DEBTS OWED TO THE UNITED STATES GOVERNMENT BY ADMINISTRATIVE OFFSET

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AUTHORITY: 45 U.S.C. 231f(b)(5); 31 U.S.C. 3716.

SOURCE: 56 FR 46375, Sept. 12, 1991, unless otherwise noted.

§ 367.1 Purpose and scope.

The regulations in this part establish procedures to implement the Debt Collection Act of 1982 (Pub. L. 97-365), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134), 31 U.S.C. 3716. The statute authorizes the Board to collect a claim arising under an agency program by means of administrative offset, and requires the Board to refer nontax debts over 180 days delinquent to the Department of Treasury for administrative offset (the "Treasury Offset Program"). No claim may be collected by such means if outstanding for more than 10 years after the Board's right to collection of the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the government

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who were charged with the responsibility to discover and collect such debts. This part specifies the agency procedures that will be followed by the Board for referral and collection by administrative offset.

[62 FR 19220, Apr. 21, 1997]

§ 367.2 Past-due legally enforceable debt.

A past-due legally enforceable debt which may be referred to another governmental agency for administrative offset is a debt:

(a) Which arose under any statute administered by the Board or under any contract; and with respect to debts referred to the Department of Treasury, is a nontax debt;

(b) Which is an obligation of a debtor who is a natural person or a business;

(c) Which, except in the case of a judgment debt, has been delinquent at least three months but not more than ten years at the time the offset is made;

(d) Which is at least \$25.00;

(e) With respect to which the rights described in part 260 or 320 of this chapter or the applicable law regarding reconsideration, waiver, and appeal, if applicable, have been exhausted;

(f) With respect to which:

(1) The Board's records do not contain evidence that the debtor (or, if an individual, his or her spouse) has filed for bankruptcy under title 11 of the United States Code; or

(2) The Board can clearly establish at the time of the referral that the automatic stay under section 362 of the Bankruptcy Code has been lifted or is no longer in effect with respect to the debtor (or, if an individual, his or her spouse) and the debt was not discharged in the bankruptcy proceeding; or

(3) The Board's records do not contain evidence that foreclosure is pending on collateral securing the debt.

(g) Which cannot currently be collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(h) Which cannot currently be collected by administrative offset under § 255.6 or § 340.6 of this chapter against amounts payable to the debtor under any statute administered by the Board;

(i) With respect to which the Board has notified, or has made a reasonable attempt to notify, the debtor that the debt is past due, and that unless the debtor repays the debt within 60 days, the debt will be referred to any other agency of the United States government for offset against any money owed the debtor by that agency; and

(j) With respect to which the Board has given the debtor at least 60 days from the date of the notification required in paragraph (i) of this section to present evidence that all or part of the debt is not past due or legally enforceable, has considered evidence, if any, presented by the debtor, and has determined that the amount of such debt is past due and legally enforceable; and

(k) Which has not been referred to the Department of Justice or which is not otherwise in litigation with the Board.

[56 FR 46375, Sept. 12, 1991, as amended at 60 FR 66073, Dec. 21, 1995; 62 FR 19220, Apr. 21, 1997]

§ 367.3 Board responsibilities.

(a) The Board may delegate to an employee or employees the responsibility for collecting any claims owed the Board by means of administrative offset, except that all nontax debts over 180 days delinquent shall be referred to the Department of Treasury for administrative offset through the Treasury Offset Program as required by 31 U.S.C. 3716;

(b) Except for mandatory referral of claims to the Department of Treasury or as otherwise directed by the Secretary of Treasury, before collecting a claim by means of administrative offset, the Board must ensure that administrative offset is feasible, allowable, and appropriate, and must notify the debtor of the Board's policies for collecting a claim by means of administrative offset.

(c) Except for mandatory referral of claims to the Department of Treasury or as otherwise directed by the Secretary of Treasury, whether collection by administrative offset is feasible is a determination to be made on a case-by-case basis, in the exercise of its sound discretion. The Board shall consider not only whether administrative offset

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can be accomplished, both practically and legally, but also whether offset is best suited to further and protect all of the Government's interests. In appropriate circumstances, the Board may give due consideration to the debtor's financial condition, and is not required to use offset in every instance in which there is an available source of funds. The Board may also consider whether offset would substantially interfere with or defeat the purposes of the program authorizing the payments against which offset is contemplated.

(d) Before advising the debtor that the delinquent debt will be subject to administrative offset, the agency official responsible for administering the program under which the debt arose shall review the claim and determine that the debt is valid and overdue.

(e) Administrative offset shall be considered by the Board only after attempting to collect a claim under the statutes administered by the Board except that no claim under this Act that has been outstanding for more than 10 years after the Government's right to collect the debt first accrued may be collected by means of administrative offset, unless facts material to the right to collect the debt were not known and could not reasonably have been known by the official of the agency who was charged with the responsibility to discover and collect such debts.

[56 FR 46375, Sept. 12, 1991, as amended at 62 FR 19220, Apr. 21, 1997.]

§ 367.4 Notification to another agency.

When the Board refers a debt under this part to another agency for collection by means of administrative offset, the Board shall provide a written certification to the other agency stating that the debtor owes the debt (including the amount) and that the provisions of this part have been fully complied with.

§ 367.5 Notification to debtor.

The notification provided by the Board to the debtor will inform the debtor how he or she may present evidence to the Board that all or part of the debt is not past due or legally enforceable.

§ 367.6 Consideration of evidence.

Evidence submitted by the debtor will be considered only by officials or employees of the Board, and a determination that all or a portion of such debt is past-due and legally enforceable will be made only by such officials or employees.

§ 367.7 Change in notification to another government agency.

If, after submitting notification of liability for a debt to another agency, the Board:

(a) Determines that an error has been made with respect to the information contained in the notification;

(b) Receives a payment or credits a payment to the account of the debtor named in the notification that reduces the amount of the debt referred to the other agency for offset; or

(c) Receives notification that the debtor has filed for bankruptcy under title 11 of the United States Code or has been adjudicated bankrupt and the debt has been discharged; the Board will promptly notify the other agency. If the amount of a debt is reduced after referral by the Board and offset by the other agency, the Board will refund to the debtor any excess amount and will promptly notify the other agency of any refund made by the Board. If the amount of debt has increased after referral by the Board but prior to offset by the other agency, then the Board will promptly notify the other agency of such increase.

[56 FR 46375, Sept. 12, 1991, as amended at 60 FR 66073, Dec. 21, 1995]

§ 367.8 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.

(a) The Board may request that monies which are due and payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset in reasonable amounts in order to collect debts owed to the Board by the debtor. Such requests shall be made to the appropriate officials of the Office of Personnel Management in accordance with such regulations as may be prescribed by the Director of that Office.

(b) When making a request for administrative offset under paragraph (a)

of this section, the Board shall include a written certification that:

(1) The debtor owes the United States a debt, including the amount of the debt;

(2) The Board has complied with all applicable statutes, regulations, and procedures of the Office of Personnel Management; and

(3) The Board has complied with the requirements of the applicable provisions of the Federal Claims Collection Standards, the Railroad Retirement Act and the Railroad Unemployment Insurance Act including any required hearing or review.

(c) When the Board decides to request administrative offset under paragraph (a) of this section, it should make the request as soon as practical after completion of the applicable due process procedures in order that the Office of Personnel Management may identify and flag the debtor's account in anticipation of the time when the debtor becomes eligible and requests to receive payments from the Fund. This will satisfy any requirement that offset be initiated prior to expiration of the applicable statute of limitations. At such time as the debtor makes a claim for payments from the Fund, if at least a year has elapsed since the offset request was originally made, the debtor will be permitted to offer a satisfactory repayment plan in lieu of offset upon establishing that changed financial circumstances would render the offset unjust.

(d) In accordance with procedures established by the Office of Personnel Management, the Board may request an offset from the Civil Service Retirement and Disability Fund prior to completion of due process procedures.

(e) If the Board collects part or all of the debt by other means before deductions are made or completed pursuant to paragraph (a) of this section, the Board shall act promptly to modify or terminate its request for offset under paragraph (a) of this section.

PART 368—PROHIBITION OF CIGARETTE SALES TO MINORS

Sec.

368.1 Introduction.

368.2 Definitions.

368.3 Vending machines.

368.4 Concession stands.

368.5 Free tobacco samples.

AUTHORITY: Sec. 636, Pub. L. 104-52, 109 Stat. 507 (40 U.S.C. 486nt).

SOURCE: 61 FR 8214, Mar. 4, 1996, unless otherwise noted.

§ 368.1 Introduction.

This part implements Public Law 104-52, the "Prohibition of Cigarette Sales to Minors in Federal Buildings and Lands Act," which prohibits the sale of tobacco products through vending machines and the distribution of free samples of tobacco products on Federal property.

§ 368.2 Definitions.

As used in this part—

Federal property includes any building and real property occupied and maintained by the Board.

Minor means an individual under the age of 18 years.

Tobacco product means cigarettes, cigars, little cigars, pipe tobacco, smokeless tobacco, snuff, and chewing tobacco.

§ 368.3 Vending machines.

The sale of tobacco products in vending machines is prohibited in or around Federal property occupied and maintained by the Railroad Retirement Board.

§ 368.4 Concession stands.

Tobacco products may be sold on property occupied and maintained by the Railroad Retirement Board only as authorized by the Railroad Retirement Board or the General Services Administration or other Federal agency. Concession stands may not sell tobacco products to minors.

§ 368.5 Free tobacco samples.

The distribution of free samples of tobacco products is prohibited in or around Federal property occupied and maintained by the Railroad Retirement Board.